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BARAFF, KOERNER, OLENDER & HOCHBERG, P. C.

ATTORNEYS AT LAW
5335 WISCONSIN AVENUE, N. W., SUITE 300
WASHINGTON, D. C. 20015-2003

(202) 686-3200

B. JAY BARAFF
ROBERT L. OLENDER
JAMES A. KOERNER
PHILIP R. HOCHBERG
MARK J. PALCHICK
JAMES E. MEYERS

OF COUNSEL
ROBERT BENNETT LUBIC

FAX: (202) 686-8282

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February 15, 1994

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FEB 15 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: MM Docket No. 92-266

Dear Mr. Caton:

On February 14, 1994, representatives of ENCORE MEDIA CORPORATION and the undersigned met with Chairman Hundt, his assistant, Karen Brinkmann, Maureen O'Connell of Commissioner Quello's office and James Coltharp of Commissioner Barrett's office. Our meetings began after 3:00 p.m. and did not conclude in time to notify you before the close of business on the 14th, but we are doing so this morning.

The purpose of the meetings was to discuss a clarification of the manner in which premium services offered over cable television systems may be multiplexed consistent with unregulated program service offerings. We have submitted this date the substance of our recommended clarification.

We also discussed the packaging of a la carte video program service offerings.

Very truly yours,

James E. Meyers

James E. Meyers
Counsel for
Encore Media Corporation

cc (w/enc.) BY HAND
Reed Hundt
Maureen O'Connell
James Coltharp

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BARAFF, KOERNER, OLENDER & HOCHBERG, P. C.

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BY HAND

Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Stop Code: 0101
Washington, DC 20554

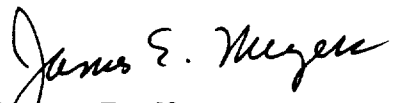
Re: MM Docket No. 92-266

Dear Mr. Chairman:

Pursuant to our meeting yesterday afternoon, we have enclosed our recommended clarification to multiplexed premium services to avoid ambiguities in interpreting the rules.

Thank you for your time and attention to our concerns.

very truly yours


James E. Meyers
Counsel for
Encore Media Corporation

cc (w/enc.) By Hand
Maureen O'Connell
James Coltharp
William Caton

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BARAFF, KOERNER, OLENDER & HOCHBERG, P. C.

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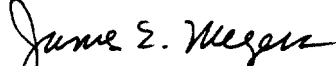
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Very truly yours,


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Recommended Clarifications to Paragraph 326 of Rate Report & Order, dated May 3, 1993, FCC 93-177.

In our First Rate Report & Order, consistent with Congressional intent, we "exclud[ed] from the definition of cable programming service per-channel or per-program premium services offered on a multiplexed or time-shifted basis" and concluded that such services will therefore not be subject to rate regulation complaints so long as they consist of "commonly-identified video programming." In this Report and Order, we aim to further clarify: (i) what services are covered by the multiplex exemption, (ii) the applicable meaning of the term "multiplex", and (iii) the scope and nature of the multiplex exemption within the Rate Regulation provisions of the Cable Act.

The legislative record is clear¹ that the exemption from rate regulation applies only to "Premium Service(s)" that have already multiplexed or which multiplex in the future. It does not apply to non-premium services that cable operators choose to offer on a per-programming, per-channel or pay-per-view basis.² Congress at House Report pages 79 and 90 defines Premium Service(s) as a service(s) that traditionally and historically was offered on a per channel basis. We recognize that per-channel, per-program service offerings that are Premium Service(s) are those that were so offered [upon enactment of the Cable Act] [upon the issuing date of the House Report]. Although neither Premium Service(s), as defined above, or other service(s) offered on a per channel per program basis are subject to rate regulation when offered as stand alone or single per channel offering(s), the multiplex exemption applies only to Premium Service(s).

Multiplexing is defined as the offering of multiple channels of commonly identified video programming as a separate tier.³ The House Report uses HBO and its two multiplexed channels (HBO2 and HBO3) as an example of multiplex premium channels.⁴ HBO is the premium channel and HBO2 and HBO3 are the multiplexed channels of HBO. To the extent that the Act provides tier exemption to the experimenting of multiplexing, of Premium Services(s), the scheduling patterns of the commonly identified video programming on

¹H. Rep. 102-628, 1022 Cong., 20 Sess. (June 29, 1992) ("House Report") at pp. 80, 90.

²Id.

³House Report, p. 80.

⁴For purposes of clarifying the multiplex exemption, we use HBO throughout for illustrative purposes only, and note that the references to HBO apply equally to all other premium services (e.g., Encore, Showtime, Disney).

the multiplexed channels of Premium Service(s) can be quite broad on a monthly basis.⁵ Programmers' scheduling options include, but are not limited to: (i) Time Shifting -- taking the same mix of titles on the Premium Service during the month and scheduling them during different dayparts on the different multiplex channels for greater viewer choice;⁶ (ii) counter-programming either by demographics (male, female, teens like HBO's multiplex) or by genre (love stories, mystery, etc. like Encore's Thematic Multiplex); and/or (iii) by offering more variety of choices such that the expansion of the Premium channel (e.g., HBO) to its multiplex channels would offer consumers additional unduplicated programming over that which would appear on the Premium channel (e.g., HBO) within any given month.

The Multiplexed Premium Service(s)/Channel(s), when offered as a separate tier, should be treated for rate regulation purposes in the same manner as a single channel premium service, (e.g., to the subscriber of HBO when HBO expands to its multiplex offering of HBO, HBO2, HBO3 tier, as long as all HBO subscriptions on the system after the multiplex tier is introduced come only in the form of the multiplex tier, no new per-channel services are deemed to have been added to the system). However, with the permission of the video programming vendor, a cable operator(s) may choose to offer any of the multiplexed premium channel as stand alone single channel purchase option(s) and such per-channel offering(s) are likewise not subject to rate regulation.⁷

For purposes of a la carte packaging, pursuant to paragraph 327 of our First Rate Report and Order, Multiplexed Premium Service(s) tiers are treated as single channel Premium Services(s) without any distinction.

We note, however, that where a cable operator bundles an entire Multiplex Premium Service tier or any individual multiplexed channels with a regulated service tier, such bundled multiplexed channels are subject to rate regulation.⁸

⁵We note that most premium services are offered on a monthly subscription basis.

⁶For example, The Disney Channel's recommended multiplex consists of using East Coast and West Coast feeds three hours apart.

⁷House Report, pp. 79-80. We note that the House Report, page 80, states that multiplex channels may be offered either as "a separate tier or as a stand alone purchase option." (Emphasis added).

⁸First Rate Report and Order, p. 206, para. 326.